

### § 1488.13

be exclusive of any other collection procedures or rights available to CCC.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977; 42 FR 30833, June 17, 1977; 43 FR 45551, Oct. 3, 1978; 44 FR 51187, Aug. 31, 1979]

#### § 1488.13 CCC drafts.

CCC will draw one draft for each payment due under bank obligations. If any portion of a CCC draft is dishonored, the U.S. bank or branch bank shall return the dishonored draft together with its statement of the reason for nonpayment. If a draft which is drawn under a partially confirmed bank obligation is dishonored, CCC will replace the draft with separate drafts for the confirmed and unconfirmed portions at the request of the confirming bank. Such replacement shall not alter the confirming bank's obligation for timely payment to CCC of the confirmed portion of the credit. For confirmed amounts, except as provided in § 1488.12(a), (c) and (d), a U.S. or branch bank may request refund from CCC of the amount paid if it certifies to CCC that it is unable to recover funds from the foreign bank due to a stipulated non-commercial risk which existed on the date payment was made to CCC under the draft. If CCC finds that inability to recover funds was due to such a non-commercial risk, the refund shall be promptly made together with interest at the Federal Reserve Bank of New York discount rate from and including the date payment was originally made to CCC but not include the date of refund by CCC. For unconfirmed amounts, remittance to CCC shall be considered final, and the U.S. bank or branch bank shall not thereafter have recourse to CCC.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 21, 1977; 42 FR 30833, June 17, 1977]

#### § 1488.14 Interest charges.

The account receivable assigned to CCC and the related bank obligation(s) shall bear interest as specified in this section. Rates of interest applicable to financing agreements shall be published in USDA announcement. The interest rate applicable to that portion of an account receivable for which payment is assured by a bank obligation

### 7 CFR Ch. XIV (1-1-10 Edition)

issued or confirmed for all risks according to § 1488.12(a)(ii) or pro rata confirmed by a U.S. bank shall be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable to that portion of an account receivable the payment of which is assured by a bank obligation issued or pro rata confirmed by a branch bank shall, when determined by the President or Vice President, CCC after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rates applicable to accounts receivable the payment of which is assured by an agency bank confirmation may, when determined by the President or Vice President, CCC, after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable will be the rate in effect on the date CCC receives the sale registration request under § 1488.4. Interest shall accrue on the account receivable from the date of delivery or the weighted average delivery date of the agricultural commodities delivered under the financing agreement to the date of payment, or to the date of expiration of the financing period, or to the date of expiration of the bank obligation, whichever occurs first, and shall be payable as specified in the financing agreement. Thereafter, interest shall accrue on any unpaid part of both the principal and interest due as of such expiration date.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977]

#### § 1488.15 Advance payment.

If, before expiration of the financing period, the exporter or the U.S. bank or the agency or branch bank accepts payment from or on behalf of the foreign importer of any part of the account receivable, it shall be remitted promptly to CCC. Such prepayment shall be applied first to interest on the unpaid balance of the account receivable to the date CCC receives such prepayment and then to the principal.

**§ 1488.16 Liability for payment.**

If delivery is made within the coverage of the bank obligation(s) submitted in accordance with § 1488.8, CCC will look to the obligating bank or banks and the foreign importer, rather than to the exporter or intervening purchaser, for payment of all amounts due at maturity of the account receivable and of the bank obligation(s), but the exporter and the intervening purchaser shall remain liable for any loss arising from breach of any contractual obligation, certification or warranty made by them pursuant to the financing agreement, and the exporter shall remain liable for any amounts not covered by the bank obligation which are owing to CCC, and any remittance or refund required by § 1488.15 and § 1488.18, together with interest thereon at the rate specified in the documents evidencing the account receivable, as well as for any liquidated damages provided for in § 1488.11. The liability of the bank and the importer under their respective obligations shall be several.

## MISCELLANEOUS PROVISIONS

**§ 1488.17 Assignment.**

The exporter shall not assign any claim or rights or any amounts payable under the financing agreement, in whole or in part, without written approval of the Vice President, CCC, or the Controller, CCC.

**§ 1488.18 Covenant against contingent fees.**

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the financing agreement on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this warranty, CCC shall have the right, without limitation on any other rights it may have, to annul the financing agreement without liability to CCC. Should the financing agreement be annulled, CCC will promptly consent to the reduction or cancellation or related bank obligations except for amounts outstanding

under a financing agreement. Such amounts shall, on demand, be refunded to CCC by the exporter.

**§ 1488.19 [Reserved]****§ 1488.20 Officials not to benefit.**

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the financing agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the financing agreement if made with a corporation for its general benefit.

**§ 1488.21 Exporter's records and accounts.**

CCC shall have access to and the right to examine any directly pertinent books, documents, papers and records of the exporter involving transactions related to the financed export credit sale until the expiration of three years after the end of the financing period.

**§ 1488.22 Communications.**

(a) Unless otherwise provided, written requests, notifications, or communications by the applicant pertaining to the financing agreement shall be addressed to the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S. Department of Agriculture, Washington, DC 20250.

(b) [Reserved]

**§ 1488.23 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.**

The information collection requirements contained in these regulations (7 CFR part 1488) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551-0021.

[Amdt. 8, 50 FR 13967, Apr. 9, 1985]

## PART 1491—FARM AND RANCH LANDS PROTECTION PROGRAM

### Subpart A—General Provisions

Sec.

1491.1 Applicability.

## § 1491.1

- 1491.2 Administration.
- 1491.3 Definitions.
- 1491.4 Program requirements.
- 1491.5 Application procedures.
- 1491.6 Ranking considerations and proposal selection.

### Subpart B—Cooperative Agreements and Conservation Easement Deeds

- 1491.20 Cooperative agreements.
- 1491.21 Funding.
- 1491.22 Conservation easement deeds.

### Subpart C—General Administration

- 1491.30 Violations and remedies.
- 1491.31 Appeals.
- 1491.32 Scheme or device.

AUTHORITY: 16 U.S.C. 3838h–3838i.

SOURCE: 74 FR 2818, Jan. 16, 2009, unless otherwise noted.

### Subpart A—General Provisions

#### § 1491.1 Applicability.

(a) The regulations in this part set forth requirements, policies, and procedures, for implementation of the Farm and Ranch Lands Protection Program (FRPP) as administered by the Natural Resources Conservation Service (NRCS). FRPP cooperative agreements shall be administered under the regulations in effect at the time the cooperative agreement is signed.

(b) The NRCS Chief may implement FRPP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

#### § 1491.2 Administration.

(a) The regulations in this part shall be administered under the general supervision and direction of the NRCS Chief.

(b) NRCS shall—

(1) Provide overall program management and implementation leadership for FRPP;

(2) Develop, maintain, and ensure that policies, guidelines, and procedures are carried out to meet program goals and objectives;

(3) Ensure that the FRPP share of the cost of an easement or other deed restrictions in eligible land shall not exceed 50 percent of the appraised fair

## 7 CFR Ch. XIV (1–1–10 Edition)

market value of the conservation easement;

(4) Determine eligibility of the land, the landowner, and the entity;

(5) Ensure a conservation plan is developed in accordance with 7 CFR part 12;

(6) Make funding decisions and determine allocations of program funds;

(7) Coordinate with the Office of the General Counsel (OGC) to ensure the legal sufficiency of the cooperative agreement and the easement deed or other legal instrument;

(8) Sign and monitor cooperative agreements for the CCC with the selected entity;

(9) Monitor and ensure conservation plan compliance with highly erodible land and wetland provisions in accordance with 7 CFR part 12; and

(10) Provide leadership for establishing, implementing, and overseeing administrative processes for easements, easement payments, and administrative and financial performance reporting.

(c) NRCS shall enter into cooperative agreements with eligible entities to assist NRCS with implementation of this part.

#### § 1491.3 Definitions.

The following definitions will apply to this part and all documents issued in accordance with this part, unless specified otherwise:

*Agricultural uses* are defined by the State's farm or ranch land protection program or equivalent, or where no program exists, agricultural uses should be defined by the State agricultural use tax assessment program. (If NRCS finds that a State definition of agriculture is so broad that an included use could lead to the degradation of soils and agriculture productivity, NRCS reserves the right to impose greater deed restrictions on the property than allowable under that State definition of agriculture in order to protect agricultural use and related conservation values.)

*Certified entity* means an eligible entity that NRCS has determined to meet the requirements of §1491.4(d) of this part.

*Chief* means the Chief of NRCS, USDA.

## Commodity Credit Corporation, USDA

## § 1491.3

*Commodity Credit Corporation (CCC)* is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. CCC provides the funding for FRPP, and NRCS administers FRPP on its behalf.

*Conservation Easement* means a voluntary, legally recorded restriction, in the form of a deed, on the use of property, in order to protect resources such as agricultural lands, historic structures, open space, and wildlife habitat.

*Conservation Plan* is the document that—

(1) Applies to highly erodible cropland;

(2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules;

(3) Is approved by the local soil conservation district in consultation with the local committees established under Section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 5909h(b)(5)) and the Secretary, or by the Secretary.

*Cooperative agreement* means the document that specifies the obligations and rights of NRCS and eligible entities participating in the program.

*Dedicated fund* means an account held by an eligible entity sufficiently capitalized for the purpose of covering expenses associated with the management, monitoring, and enforcement of conservation easements and where such account cannot be used for other purposes.

*Eligible entity* means federally recognized Indian Tribes, State, unit of local government, or a non-governmental organization, which has a farmland protection program that purchases agricultural conservation easements for the purpose of protecting agriculture use and related conservation values by limiting conversion to non-agricultural uses of the land.

*Fair market value* means the value of a conservation easement as ascertained through standard real property ap-

praisal methods, as established in § 1491.4(g).

*Farm and ranch land of statewide importance* means, in addition to prime and unique farmland, land that is of statewide importance for the production of food, feed, fiber, forage, biofuels, and oil seed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law in accordance with 7 CFR part 657.

*Farm and ranch land of local importance* means farm or ranch land used to produce food, feed, fiber, forage, biofuels, and oilseed crops, that are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned. Farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

*Farm or Ranch Succession Plan* means a general plan to address the continuation of some type of agricultural business on the conserved land; the farm or ranch succession plan may include specific intra-family succession agreements or strategies to address business asset transfer planning to create opportunities for beginning farmers and ranchers.

*Field Office Technical Guide (FOTG)* means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

*Forest land* means a land cover or use category that is at least 10 percent

stocked by single-stemmed woody species of any size that will be at least 13 feet tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cutover forest or abandoned farmland) that is not currently developed for non-forest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater.

*Forest management plan* means a site-specific plan that is prepared by a professional resource manager, in consultation with the participant, and is approved by the State Conservationist. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a); another practice plan approved by the State Forester; or another plan determined appropriate by the State Conservationist. The plan complies with applicable Federal, State, Tribal, and local laws, regulations and permit requirements.

*Historical and archaeological resources* mean resources that are:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, *et seq.*),

(2) Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA),

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101(b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA), or

(4) Included in the SHPO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.

*Imminent harm* means easement violations or threatened violations that, as determined by the Chief, would likely cause immediate and significant degradation to the conservation values; for example, those violations that would adversely impact agriculture use, productivity, and related con-

servation values or result in the erosion of topsoil beyond acceptable levels as established by NRCS.

*Indian Tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450(b)(e)).

*Land Evaluation and Site Assessment System (LESA)* means the land evaluation system approved by the NRCS State Conservationist used to rank land for farm and ranch land protection purposes, based on soil potential for agriculture, as well as social and economic factors, such as location, access to markets, and adjacent land use. (For additional information see the Farmland Protection Policy Act rule at 7 CFR part 658.)

*Landowner* means a person, legal entity, or Indian tribe having legal ownership of land and those who may be buying eligible land under a purchase agreement. The term, “landowner” may include all forms of collective ownership including joint tenants, tenants-in-common, and life tenants. State governments, local governments, and non-governmental organizations that qualify as eligible entities are not eligible as landowners, unless otherwise determined by the Chief.

*Natural Resources Conservation Service (NRCS)* means an agency of the United States Department of Agriculture.

*Non-governmental organization* means any organization that:

(1) Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code; and

(3) Is described—

(i) In section 509(a)(1) and (2) of that Code; or

## Commodity Credit Corporation, USDA

## § 1491.4

(ii) Is described in section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

*Other interests in land* include any right in real property other than easements that are recognized by State law. FRPP funds shall only be used to purchase other interests in land with prior approval from the Chief.

*Other productive soils* means farm and ranch land soils, in addition to prime farmland soils that include unique farmland and farm and ranch land of statewide and local importance.

*Pending offer* means a written bid, contract, or option extended to a landowner by an eligible entity to acquire a conservation easement before the legal title to these rights has been conveyed for the purpose of limiting non-agricultural uses of the land.

*Prime farmland* means land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion, as determined by the Secretary.

*Purchase price* means the appraised fair market value of the easement minus the landowner donation.

*Right of enforcement* means a vested right set forth in the conservation easement deed, equal in scope to the right of inspection and enforcement granted to the grantee, that the Chief, on behalf of the United States, may exercise under specific circumstances in order to enforce the terms of the conservation easement when not enforced by the holder of the easement.

*Secretary* means the Secretary of the United States Department of Agriculture.

*State Technical Committee* means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

*State Conservationist* means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Island Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

*Unique farmland* means land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

[74 FR 2818, Jan. 16, 2009, as amended at 74 FR 31581, July 2, 2009]

### § 1491.4 Program requirements.

(a) Under FRPP, the Chief, on behalf of CCC, shall provide funding for the purchase of conservation easements or other interests in eligible land that is subject to a pending offer from an eligible entity for the purpose of protecting the agricultural use and related conservation values of the land by limiting nonagricultural uses of the land. Eligible entities submit applications to NRCS State Offices to partner with NRCS to acquire conservation easements on farm and ranch land. NRCS enters into cooperative agreements with selected entities and provides funds for up to 50 percent of the fair market value of the easement. In return, the entity agrees to acquire, hold, manage, and enforce the easement. A Federal right of enforcement must also be included in each FRPP funded easement deed for the protection of the Federal investment.

(b) The term of all easements or other interests in land shall be in perpetuity unless prohibited by State law. In States that limit the term of the easement or other interest in land, the term of the easement or other interest in land must be the maximum allowed by State law.

(c) To be eligible to receive FRPP funding, an entity must meet the definition of "eligible entity" as listed in § 1491.3. In addition, eligible entities interested in receiving FRPP funds must demonstrate:

#### § 1491.4

#### 7 CFR Ch. XIV (1–1–10 Edition)

(1) A commitment to long-term conservation of agricultural lands;

(2) A capability to acquire, manage, and enforce easements;

(3) Sufficient number of staff dedicated to monitoring and easement stewardship; and

(4) The availability of funds.

(d) To be eligible as a “certified entity,” an entity must be qualified to be an “eligible entity” and have demonstrated, as determined by the Chief:

(1) The ability to complete acquisition of easements in a timely fashion;

(2) The ability to monitor easements on a regular basis;

(3) The ability to enforce the provisions of easement deeds;

(4) Experience enrolling parcels in the Farm and Ranch Lands Protection Program (FRPP) or the Farmland Protection Program (FPP);

(5) For non-governmental organizations, the existence of a dedicated fund for the purposes of easement management, monitoring, and enforcement where such fund is sufficiently capitalized in accordance with NRCS standards. The dedicated fund must be dedicated to the purposes of managing, monitoring, and enforcing each easement held by the eligible entity; and

(6) Other certification criteria, including having a plan for administering easements enrolled under this part, as determined by the Chief.

(e) Review and Revocation of Certification.

(1) The Chief shall conduct a review of certified entities every three years to ensure that the certified entities are meeting the certification criteria established in § 1491.4(d).

(2) If the Chief finds that the certified entity no longer meets the criteria in § 1491.4(d), the Chief may:

(i) Allow the certified entity a specified period of time, at a minimum 180 days, in which to take such actions as may be necessary to meet the criteria; and

(ii) Revoke the certification of the entity, if after the specified period of time, the certified entity does not meet the criteria established in § 1491.4(d).

(f) Eligible land:

(1) Must be privately owned land on a farm or ranch and contain at least 50 percent prime, unique, Statewide, or

locally important farmland, unless otherwise determined by the State Conservationist; contain historical or archaeological resources; or furthers a State or local policy consistent with the purposes of the program; and is subject to a pending offer by an eligible entity;

(2) Must be cropland, rangeland, grassland, pasture land, or forest land that contributes to the economic viability of an agricultural operation or serves as a buffer to protect an agricultural operation from development;

(3) May include land that is incidental to the cropland, rangeland, grassland, pasture land, or forest land if the incidental land is determined by the Secretary to be necessary for the efficient administration of a conservation easement;

(4) May include parts of or entire farms or ranches;

(5) Must not include forest land of greater than two-thirds of the easement area. Forest land that exceeds the greater of 10 acres or 10 percent of the easement area shall have a forest management plan before closing;

(6) Unless otherwise determined by the Chief, NRCS shall not provide FRPP funds for the purchase of an easement or other interest in land on land owned in fee title by an agency of the United States, a State or local government, or by an entity whose purpose is to protect agricultural use and related conservation values, including those listed in the statute under eligible land, or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use;

(7) Must be owned by landowners who certify that they do not exceed the adjusted gross income limitation eligibility requirements set forth in part 1400 of this title;

(8) Must possess suitable on-site and off-site conditions which will allow the easement to be effective in achieving the purposes of the program. Suitability conditions may include, but are not limited to, hazardous substances on or in the vicinity of the parcel, land use surrounding the parcel that is not compatible with agriculture, and highway or utility corridors that are

planned to pass through or immediately adjacent to the parcel; and

(9) May be land on which gas, oil, earth, or other mineral rights exploration has been leased or is owned by someone other than the applicant may be offered for participation in the program. However, if an applicant submits an offer for an easement project, USDA will assess the potential impact that the third party rights may have upon achieving the program purposes. USDA reserves the right to deny funding for any application where there are exceptions to clear title on any property.

(g) Prior to FRPP fund disbursement, the value of the conservation easement must be appraised. Appraisals must be completed and signed by a State-certified general appraiser and must contain a disclosure statement by the appraiser. The appraisal must conform to the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions, as selected by the entity. State Conservationists will provide the guidelines through which NRCS will review appraisals for quality control purposes.

(h) The landowner shall be responsible for complying with the Highly Erodible Land and Wetland Conservation provisions of the Food Security Act of 1985, as amended, and 7 CFR part 12.

[74 FR 2818, Jan. 16, 2009, as amended at 74 FR 31581, July 2, 2009]

#### § 1491.5 Application procedures.

(a) An entity shall submit an application to the State Conservationist in the State where parcels are located in order to determine if the entity is eligible to participate in FRPP.

(b) The Chief shall determine whether an eligible entity is a certified entity based on the criteria set forth in § 1491.4(d); information provided by the entity's application; and data in the national FRPP database.

(c) The State Conservationist shall notify each entity if it has been determined eligible, certified, or ineligible.

(d) Entities with cooperative agreements entered into after the effective date of this part will not have to resubmit an annual application for the duration of the cooperative agreement. En-

ties may reapply for eligibility when their cooperative agreements expire.

(e) Throughout the fiscal year, eligible entities may submit to the appropriate NRCS State Conservationist applications for parcels, in that State, with supporting information to be scored, ranked, and considered for funding.

(f) At the end of each fiscal year, the lists of pending, unfunded parcels shall be cancelled unless the entity requests that specific parcels be considered for funding in the next fiscal year. Entities must submit a new list of parcels each fiscal year in order to be considered for funding unless they request that parcels from the previous fiscal year be considered.

#### § 1491.6 Ranking considerations and proposal selection.

(a) Before the State Conservationist can score and rank the parcels for funding, the eligibility of the landowner and the land must be assessed.

(b) The State Conservationist shall use National and State criteria to score and rank parcels. The national ranking criteria will be established by the Chief and the State criteria will be determined by the State Conservationist, with advice from the State Technical Committee. The national criteria shall comprise at least half of the ranking system score.

(c) When funds are available, the State Conservationist shall announce the date on which ranking of parcels shall occur. A State Conservationist may announce more than one date of ranking in a fiscal year.

(d) All parcels submitted throughout the fiscal year shall be scored. All parcels will be ranked together in accordance with the national and state ranking criteria before parcels are selected for funding.

(e) The parcels selected for funding shall be listed on the agreements of the entities that submitted the parcels and the agreements shall be signed by the State Conservationist and the eligible entity. Funds for each fiscal year's parcels shall be obligated with a new signature each year on an amendment to the agreement. Parcels funded on each fiscal year's amendment shall have a

## § 1491.20

separate deadline for closing and requesting reimbursement.

(f) The national ranking criteria are:

(1) Percent of prime, unique, and important farmland in the parcel to be protected;

(2) Percent of cropland, pastureland, grassland, and rangeland in the parcel to be protected;

(3) Ratio of the total acres of land in the parcel to be protected to average farm size in the county according to the most recent USDA Census of Agriculture;

(4) Decrease in the percentage of acreage of farm and ranch land in the county in which the parcel is located between the last two USDA Censuses of Agriculture;

(5) Percent population growth in the county as documented by the United States Census;

(6) Population density (population per square mile) as documented by the most recent United States Census;

(7) Proximity of the parcel to other protected land, such as military installations land owned in fee title by the United States or a State or local government, or by an entity whose purpose is to protect agricultural use and related conservation values, or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use;

(8) Proximity of the parcel to other agricultural operations and infrastructure; and

(9) Other additional criteria as determined by the Chief.

(g) State or local criteria, as determined by the State Conservationist, with advice of the State Technical Committee, may include:

(1) The location of a parcel in an area zoned for agricultural use;

(2) The performance of an entity experience in managing and enforcing easements. Performance must be measured by the closing efficiency or percentage of monitoring that is reported. Years of an entity's existence shall not be used as a ranking factor;

(3) Multifunctional benefits of farm and ranch land protection including social, economic, historical and archaeological, and environmental benefits;

## 7 CFR Ch. XIV (1–1–10 Edition)

(4) Geographic regions where the enrollment of particular lands may help achieve National, State, and regional conservation goals and objectives, or enhance existing government or private conservation projects;

(5) Diversity of natural resources to be protected;

(6) Score in the Land Evaluation and Site Assessment (LESA) system. This score serves as a measure of agricultural viability (access to markets and infrastructure);

(7) Existence of a farm or ranch succession plan or similar plan established to encourage farm viability for future generations; and

(8) Landowner willingness to allow public access for recreational purposes.

(h) State ranking criteria will be developed on a State-by-State basis. The State Conservationist will make available a full listing of applicable National and State ranking criteria.

### Subpart B—Cooperative Agreements and Conservation Easement Deeds

#### § 1491.20 Cooperative agreements.

(a) NRCS, on behalf of CCC, shall enter into a cooperative agreement with those entities selected for funding. Once a proposal is selected by the State Conservationist, the entity must work with the State Conservationist to finalize and sign the cooperative agreement, incorporating all necessary FRPP requirements. The cooperative agreement must address:

(1) The interests in land to be acquired, including the United States' right of enforcement as well as the form and other terms and conditions of the easement deed;

(2) The management and enforcement of the rights on lands acquired with FRPP funds;

(3) The responsibilities of NRCS;

(4) The responsibilities of the eligible entity on lands acquired with FRPP funds;

(5) The allowance of parcel substitution upon mutual agreement of the parties; and

(6) Other requirements deemed necessary by NRCS to meet the purposes of this part or protect the interests of the United States.

## Commodity Credit Corporation, USDA

## § 1491.22

(b) The term of cooperative agreements shall be a minimum of five years for certified entities and three years for other eligible entities.

(c) The cooperative agreement shall also include an attachment listing the parcels accepted by the State Conservationist. This list shall include landowners' names and addresses, acreage, the estimated fair market value, the estimated Federal contribution, and other relevant information. An example of a cooperative agreement shall be made available by the State Conservationist.

### § 1491.21 Funding.

(a) Subject to the statutory limits, the State Conservationist, in coordination with the cooperating entity, shall determine the NRCS share of the cost of purchasing a conservation easement or other interest in the land.

(b) NRCS may provide up to 50 percent of the appraised fair market value of the conservation easement, as determined in §1491.4(g). An entity shall share in the cost of purchasing a conservation easement in accordance with the limitations of this part.

(c) A landowner may make donations toward the acquisition of the conservation easement.

(d) The entity must provide a minimum of 25 percent of the purchase price of the conservation easement.

(e) FRPP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the entity.

(f) If the State Conservationist determines that the purchase of two or more conservation easements are comparable in achieving FRPP goals, the State Conservationist shall not assign a higher priority to any one of these conservation easements solely on the basis of lesser cost to FRPP.

(g) Environmental Services Credits.

(1) NRCS asserts no direct or indirect interest in environmental credits that may result from or be associated with an FRPP easement.

(2) NRCS retains the authority to ensure that the requirements for FRPP-funded easements are met and maintained consistent with this part.

(3) If activities required under an environmental credit agreement may affect land covered under a FRPP easement, landowners are encouraged to request a compatibility assessment from the eligible entity prior to entering into such agreements.

### § 1491.22 Conservation easement deeds.

(a) Under FRPP, a landowner grants an easement to an eligible entity with which NRCS has entered into an FRPP cooperative agreement. The easement shall require that the easement area be maintained in accordance with FRPP goals and objectives for the term of the easement.

(b) Pending offers by an eligible entity must be for acquiring an easement in perpetuity, except where State law prohibits a permanent easement. In such cases where State law limits the term of a conservation easement, the easement term shall be for the maximum allowed under state law.

(c) The entity may use its own terms and conditions in the conservation easement deed, but a conservation easement deed template used by the eligible entity shall be submitted to the NRCS National Headquarters within 30 days of the signing of the cooperative agreement. The conservation easement deed templates must be reviewed and approved by the NRCS National Headquarters in advance of use. NRCS reserves the right to require additional specific language or to remove language in the conservation easement deed to protect the interests of the United States. The Chief may exercise the option to promulgate standard minimum conservation deed requirements as a condition for receiving FRPP funds.

(d) The conveyance document must include a "right of enforcement" clause. NRCS shall specify the terms for the "right of enforcement" clause to read as set forth in the FRPP cooperative agreement. This right is a vested property right and cannot be condemned by State or local government.

(e) As a condition for participation, a conservation plan shall be developed by NRCS in consultation with the landowner and implemented according to the NRCS Field Office Technical Guide.

## § 1491.30

NRCS may work through the local conservation district in the development of the conservation plan. The conservation plan will be developed and managed in accordance with the Food Security Act of 1985, as amended, 7 CFR part 12 or subsequent regulations, and other requirements as determined by the State Conservationist. To ensure compliance with this conservation plan, the easement shall grant to the United States, through NRCS, its successors or assigns, a right of access to the easement area.

(f) The cooperating entity shall acquire, hold, manage and enforce the easement. The cooperating entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities.

(g) Prior to easement closing, NRCS must sign an acceptance of the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed.

(h) All conservation easement deeds acquired with FRPP funds must be recorded. Proof of recordation shall be provided to NRCS by the cooperating entity.

(i) Impervious surfaces shall not exceed two percent of the FRPP easement area, excluding NRCS-approved conservation practices. The NRCS State Conservationist may waive the two percent impervious surface limitation on a parcel by parcel basis, provided that no more than ten percent of the easement area is covered by impervious surfaces. Before waiving the two percent limitation, the State Conservationist must consider, at a minimum: population density; the ratio of open prime other important farmland versus impervious surfaces on the easement area; the impact to water quality concerns in the area; the type of agricultural operation; and parcel size. All FRPP easements must include language limiting the amount of impervious surfaces within the easement area.

(j) The conservation easement deed must include an indemnification clause requiring the landowner (grantor) to indemnify and hold harmless the United States from any liability arising

## 7 CFR Ch. XIV (1–1–10 Edition)

from or related to the property enrolled in FRPP.

(k) The conservation easement deed must include an amendment clause requiring that any changes to the easement deed after its recordation must be consistent with the purposes of the conservation easement and this part.

[74 FR 2818, Jan. 16, 2009, as amended at 74 FR 31581, July 2, 2009]

### Subpart C—General Administration

#### § 1491.30 Violations and remedies.

(a) In the event of a violation of the terms of the easement, the eligible entity shall notify the landowner. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the conservation easement.

(b) In the event that the entity fails to enforce any of the terms of the conservation easement, as determined in the sole discretion of the Chief, the Chief and his or her successors or assigns may exercise the United States' rights to enforce the terms of the conservation easement through any and all authorities available under Federal or State law.

(c) Notwithstanding paragraph (a) of this section, NRCS, upon notification to the landowner, reserves the right to enter upon the easement area at any time to monitor conservation plan implementation or remedy deficiencies or easement violations, as it relates to the conservation plan. The entry may be made at the discretion of NRCS when the actions are deemed necessary to protect highly erodible soils and wetland resources. The landowner will be liable for any costs incurred by the NRCS as a result of the landowner's negligence or failure to comply with the easement requirements as it relates to conservation plan violations.

(d) The United States shall be entitled to recover any and all administrative and legal costs from the participating entity, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of the FRPP easement.